

## REMARKS

Claims 1-9, 12-19, 22-29, 31-40, 58, 59, and 67-91 are pending in the application, claims 82-91 being newly added herein. Claims 10, 11, 20, 21, 30, 41-57, and 60-66 were previously canceled. Claims 1, 29, 58, 68, 70, 72, 73, 78, and 90 are the only independent claims.

### *Specification*

The specification has been amended to provide antecedent basis for claim language newly introduced herein. The new language finds support in the disclosure as a whole, particularly in view of the intent and purpose of the invention and the ordinary circumstances of use, as would be understood by one skilled in the art.

With respect to the amendments to paragraphs 0020 and 0109 of the published application, applicant's invention seeks to promote the health of the skin and naturally seeks to avoid any damage to the skin, including visible damage such as tanning. As set forth on page 15, line 4, of applicant's disclosure, the method applies light that "will not be dangerous to the health of the target skin." As further disclosed on page 17, lines 13-14, one selects an "inter-pulse interval of such a magnitude [that] reduces the changes of inadvertent damage to the epidermis."

Applicant is interested only in the application of beneficial energy. See page 6, lines 10-13 and 20-23: "This beneficial energy may be delivered to any area – whether including or excluding the original target area of the undesirable energy. This beneficial energy may be delivered at any time – before, during, or after the undesired energy is delivered or in various combinations thereof.... Beneficial energy may be delivered in varying combinations and strengths." Thus, applicant's method contemplates the application of electromagnetic radiation in such doses, characterized by such parameters, as to avoid damage to the skin,

naturally including visible damage, and to reduce damage caused by other sources of Xray or UV radiation.

Tanning damages the skin. Tanning is visible evidence of skin damage. As evidentiary support for this fact, applicant encloses herewith copies of two publications available on the World Wide Web, namely, "Ultraviolet Index: What You Need to Know" on the Web site of the American Academy of Dermatology, and "The Case Against Indoor Tanning" on the Web site of the Skin Cancer Foundation. The former publication states:

Dermatologists know that a tan is a sign of skin damage. A tan may protect against sunburn, but in reality it is a form of sun damage and will not prevent further sun damage. Your skin "remembers" all damage, and with every burn, the skin becomes more damaged.

According to the latter publication,

This rather minor protection [from a tan] is cited to support the suggestion that a tan is healthy; that is not the case. In fact the important point is that damage to the DNA must have been produced to create the tan in the first place.... By increasing exposure to carcinogenic UV rays, the risk of skin cancer is increased.

Applicant's invention that electromagnetic radiation may be applied in such doses as to be healthy and reduce skin damage is not taught or suggested by the references of record.

With respect to the amendments to paragraphs 0073 and 0127 of the published application, the application of the marker film continuously over the entire skin surface to which electromagnetic radiation is applied would be understood as logically necessary or inherent to the intended results of protecting the skin by blocking further radiation from reaching the skin.

#### *Claims Rejections - 35 U.S.C. § 112*

Claims 1-9, 12-19, 22-28, and 67-79 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which applicant regards as the invention. Specifically, the Examiner objects to the language “partially prevent, reverse or inhibit.”

In response to the rejection of 1-9, 12-19, 22-28, and 67-79 under 35 U.S.C. § 112, second paragraph, the phrase “partially prevent, reverse or inhibit” has been replaced with the word “reduce.” This amendment overcomes the rejection under 35 U.S.C. § 112, second paragraph.

### ***Claims Rejections - 35 U.S.C. § 103***

Claims 1, 18, 19, 24, and 67-79 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,882,598 to Wulf.

Claims 58 and 59 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,171,302 to Talpalriu et al. (“Talpalriu”).

Claims 1-9, 12-19, 24, 29-37, 40 and 80 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wulf in view of U.S. Patent No. 6,514,243 to Eckhouse et al. (“Eckhouse”).

Claims 38 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wulf in view of Eckhouse and further in view of Talpalriu.

Claims 1 and 25-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wulf in view of U.S. Patent No. 6,676,655 to McDaniel.

Claims 1, 22 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wulf in view of Talpalriu.

Claims 1, 68, 69 and 70-79 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,282,842 to Changaris.

Claim 81 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Talpalriu in view of U.S. Patent No. 6,730,113 to Eckhardt et al. ("Eckhardt").

**The Invention** Applicant's invention pertains to a prophylactic method of applying electromagnetic radiation to skin surfaces to reduce, if not eliminate, the likelihood that those skin surfaces will be damaged by exposure to a source of Xray or ultraviolet radiation. None of the prior art references relied on by the Examiner say anything whatsoever about such a therapeutic application of electromagnetic radiation.

Applicant's method is designed to promote healthy skin and avoids causing skin damage. In particular, applicant's method does not tan the skin. (It is well known that tanning damages the skin. See enclosed publications.) In contrast, the main prior art references relied on by the Examiner, namely, Wulf and Changaris, disclose methods whose purpose is to stimulate or cause tanning. Amendments made herein to independent claims 1 and 68 highlight this distinction between applicant's method and the prior art.

The lack of overlap between applicant's method and the prior art may be seen in the fact that applicant's method could be beneficially used in conjunction with the methods of Wulf and Changaris to reduce damage to the skin caused by those prior art methods. ("The multiple pass method is particularly effective in treating skin that is tanned or otherwise heavily pigmented." Pages 8-9 of applicant's disclosure. "Multiple passes can be used to treat tanned skin without any undesirable effects." Page 46, line 23. )

**Claim 68** Pursuant to the above observations, Applicant has amended claim 68 herein and contends that claim 68 distinguishes over the prior art. As set forth in claim 68, a skin treatment method comprises periodically applying, in temporally spaced treatment sessions, electromagnetic radiation to a skin surface of an individual to at least reduce damage to the skin caused by exposure of the individual to Xray or ultraviolet radiation. The

electromagnetic radiation is applied to the skin surface in each of the treatment sessions prior to, during or after the exposure of the individual to Xray or ultraviolet radiation. The electromagnetic radiation is applied to the skin surface in the absence of any visible undesirable condition along the skin surface. Pursuant to the amendment made herein to claim 68, the electromagnetic radiation is characterized by parameters including pulse duration, wavelength and total energy so selected that the applying of the electromagnetic radiation promotes healthy skin and generates no visible damage such as tanning.

*None of the references of record discloses or suggests the application of electromagnetic radiation to a skin surface in the absence of any visible undesirable condition along that skin surface, to promote the health of the skin and in the process generate no visible damage such as tanning.*

The references relied on by the Examiner in rejecting claim 68, namely, Wulf and Chagaris, do not anticipate or suggest applicant's invention as set forth in amended claim 68.

Wulf is directed to a method and apparatus for determining an individual's ability to stand exposure to ultraviolet radiation. Wulf's invention is principally concerned with measuring or testing susceptibility of a person's skin to certain kinds of damage arising from solar radiation. More particularly, Wulf is directed to a method and apparatus

for determining an individual's ability to stand exposure to ultraviolet radiation prior to causing a skin reaction, such as skin cancer or erythema, or for determining an individual's ability to become tanned by exposure to ultraviolet radiation, at least part of the individual's skin surface is exposed to electromagnetic radiation of a predetermined spectral composition, e.g. visible light, and of a predetermined intensity. The intensity of electromagnetic radiation reflected from the part of the individual's skin surface is measured so as to determine the coefficient of reflection of the part exposed to electromagnetic radiation of the predetermined spectral composition. The coefficient of reflection is converted into logarithmic representation and the logarithmic representation of the coefficient of reflection constitutes a measure representing the individual's ability to

stand exposure to ultraviolet radiation prior to causing said skin reaction, or into a measure representing said individual's ability to become tanned by exposure to ultraviolet radiation. (from Wulf Abstract)

The measurements made pursuant to the method of Wulf are used to limit, control, or regulate the amount of sun exposure to which an individual is subjected. The electromagnetic radiation applied by Wulf is used, for the most part, only to measure or test a person's skin and not therapeutically to reduce skin damage. (As discussed below with reference to claim 72, Wulf also discloses a dosimeter and a method of using the dosimeter to warn a person against continued exposure to UV radiation based on the degree of exposure detected and the person's natural or inherent skin characteristics, as measured by the Wulf method.)

Wulf does briefly describe, in column 6, lines 40-60, and the paragraph bridging columns 19 and 20, methodology in which electromagnetic radiation is applied to the skin to reduce future skin damage caused by sun exposure. For individuals of a certain skin type, this method entails the application of low intensity UVB radiation and subsequently a large amount of UVA radiation to stimulate a tanning reaction. The low intensity UVB radiation serves to start melanogenesis by stimulation of the melanocytes. This method of Wulf controllably damages the skin by tanning, as a preemptive strike against further uncontrolled skin damage.

Applicant's method *avoids tanning, as tanning is per se damage* to the skin. Applicant applies electromagnetic radiation in such doses (characterized by pulse duration, wavelength, total energy) as to promote healthy skin and generate no visible damage such as tanning. Illustratively, applicant's method prescribes the application of radiation to dark skin in lower doses than to light skin. (See, e.g., page 17, lines 22-23; page 18, lines 5-7; page 27, lines 8-9). This is opposite to what would be prescribed by the method of Wulf.

Changaris is directed to a method for inducing tanning, wherein ultraviolet radiation is applied in pulses to reduce the damage naturally caused by the application of ultraviolet radiation. Changaris is not otherwise concerned with reducing the damage caused by subsequent exposure to solar radiation. Like the method of Wulf, the method of Changaris necessarily damages the skin. Unlike Changaris, applicant seeks to avoid skin damage such as tanning and to promote healthy epidermal, dermal and subdermal tissues.

None of the other references relied on by the Examiner discloses or suggests a method of applying electromagnetic radiation to reduce skin damage caused by exposure to a source of Xray or ultraviolet radiation. With respect to claim 68, none of the other references relied on by the Examiner *discloses or suggests the application of electromagnetic radiation to a skin surface in the absence of any visible undesirable condition along that skin surface, to promote the health of the skin and in the process generating no visible damage such as tanning.*

**Claim 1** Claim 1 has been amended to incorporate the same additional language as added to claim 68.

As set forth in claim 1, a skin treatment method comprises applying electromagnetic radiation to a skin surface of an individual in a first treatment session to at least reduce damage to the skin caused by exposure of the individual to a source of Xray or ultraviolet radiation. The applying of the electromagnetic radiation to the skin surface is effectuated prior to, during or after the exposure of the individual to the source of Xray or ultraviolet radiation. The applying of the electromagnetic radiation to the skin surface is effectuated in the absence of any visible undesirable condition along the skin surface. Prior to detection of any substantial visible change in the skin surface, electromagnetic radiation is subsequently applied in a second treatment session to the skin surface to at least reduce damage to the skin

caused by exposure to Xray or ultraviolet radiation. The electromagnetic radiation applied in the first treatment session and the second treatment session is characterized by parameters including pulse duration, wavelength and total energy so selected that the applying of the electromagnetic radiation collectively promotes healthy skin and generates no visible damage such as tanning.

Amended claim 1 distinguishes over the prior art relied on by the Examiner because none of those references, whether considered individually or collectively, either discloses or suggests a method for at least reducing damage to the skin caused by exposure of the individual to a source of Xray or ultraviolet radiation, wherein *electromagnetic radiation applied to a skin surface is characterized by parameters including pulse duration, wavelength and total energy so selected that the applying of the electromagnetic radiation collectively promotes healthy skin and generates no visible damage such as tanning.*

The principal references relied on by the Examiner in rejecting claim 1, namely, Wulf and Changaris, disclose methods for inducing skin tanning, a damaging of the skin that applicant's invention for promoting healthy skin and reducing the chances of skin damage seeks to avoid. Any modifications of the methods of Wulf and Changaris suggested by the teachings of the secondary references of Eckhouse, McDaniel, and Talpalriu would not change the purpose of Wulf and Changaris to cause skin tanning (melanogenesis).

The Eckhouse reference is directed to a process for removing hair and treating visibly undesirable dermatological disorders. Eckhouse targets melanin in the follicles and below the epidermis. Eckhouse says nothing about treating skin for reducing skin damage caused by exposure to a source of Xray or ultraviolet radiation.



McDaniel is directed to a method for treating various dermatological conditions using electromagnetic radiation, specifically by the manipulation of collagen, fibroblast, and fibroblast-derived cell levels in mammalian tissue.

Talpalriu discloses an apparatus and a method for synchronizing the activation of a light source with the position of a hand piece on a surface and for providing a substantially homogenous exposure of a surface to light irradiation. Talpalriu says nothing about treating skin for reducing skin damage caused by exposure to a source of Xray or ultraviolet radiation.

Neither Eckhouse nor McDaniel nor Talpalriu can change the basic purpose or object of Wulf or Changaris, namely, to induce tanning of the skin. As indicated above, this *purpose and effect of the methods of Wulf and Changaris is necessarily and unavoidably damaging to the skin and contrary to applicant's method, which is to apply electromagnetic radiation in such doses as to promote healthy skin and reduce the chances of skin damage.*

**Claim 29** Applicant respectfully traverses the rejection of claim 29 under 35 U.S.C. § 103(a) and maintains that claim 29 distinguishes over the prior art. As set forth in claim 29, a prophylactic skin treatment method comprises (a) generating a predetermined number of pulses of electromagnetic radiation each having a predetermined electromagnetic spectrum, (b) applying the pulses of electromagnetic radiation to an individual's skin surface, the pulses having at least one predetermined pulse duration, and a predetermined total energy, (c) exposing the individual to Xray or ultraviolet radiation, the exposing of the individual to Xray or ultraviolet radiation occurring within a predetermined period of time of the applying of the pulses to the skin surface, and (d) at least in part owing to the applying of the pulses to the skin surface, reducing or preventing damage to the tissues of the skin

surface arising from the exposing of the individual to Xray or ultraviolet radiation. The pulse duration and total energy are so selected that the applying of the pulses of electromagnetic radiation promotes health of the skin and generates no visible damage such as tanning.

Claim 29 is deemed to be patentable for reasons discussed above with reference to claim 1. In addition, none of the reference cited by the Examiner, whether viewed individually or collectively, either discloses or suggests the exposing of an individual to Xray or ultraviolet radiation *within a predetermined period of time* of applying of pulses of electromagnetic radiation to the skin surface. The Examiner rejects claim 29 over prior art evidently because individuals subjected to pulsed light for dermatological repair purposes inevitably become exposed to solar radiation and therefore to potentially damaging Xray and ultraviolet radiation. However, the prior art does not teach or suggest that the exposure to the Xray or ultraviolet source occur within a *predetermined period of time* of the application to electromagnetic radiation pulses. Pursuant to the prior art, the exposure to an Xray or ultraviolet source and the application of light pulses occur at random or arbitrary times relative to one another.

In column 6, lines 40-60, Wulf teaches the exposure of an individual to ultraviolet light for purposes of stimulating melanogenesis, commonly known as skin tanning. Wulf says nothing about when this UV exposure is to occur relative to another exposure of the individual to a source of UV radiation. Since tanned skin lasts for quite some time, there is understandably no need to subject the individual to the dangerous radiation within a predetermined (e.g., short) time of the “protective” treatment with UV radiation.

In contrast, applicant’s invention treats a person’s skin with a low dose of radiation particularly geared towards enhancing the skin’s health and at least reducing the damage to the skin caused by such exposures as that contemplated by Wulf for treatment purposes.

The purpose and effect of applicant's invention is optimally achieved if the exposure to the damaging source of radiation is effectuated *within a predetermined period* of application of electromagnetic radiation pursuant to applicant's method.

As set forth in dependent claim 31, the predetermined period of time is advantageously less than 24 hours. This period is not taught or suggested by Wulf (or Changaris). In fact Wulf inherently teaches away from such a short period of time, inasmuch as a "protective" tan (a UVB tan) is not effectively generated in less than 24 hours. One of ordinary skill in the art following the teachings of Wulf would require a wait of greater than 24 hours before the treated individual is exposed to solar radiation.

Dependent claims 12, 13, 14, 15, and 67 are considered patentable for the reasons discussed above with reference to claims 29 and 31.

**Claim 73** Claim 73 has been amended to provide a better definition of a specific feature of applicant's invention. More particularly, claim 73 has been amended to recite the application of electromagnetic radiation within a predetermined period of exposure of a skin surface to solar radiation (which includes ultraviolet radiation).

As set forth in claim 73, a skin treatment method comprising applying an effective amount of electromagnetic radiation to a skin surface to at least partially prevent, reverse, or inhibit damage to the skin caused by exposure to solar radiation. The electromagnetic radiation is applied to the skin surface on at least one occasion prior to, during or after the exposure of the individual to solar radiation. The electromagnetic radiation is applied to the skin surface in the absence of any visible solar radiation damage along the skin surface. The electromagnetic radiation is applied to the skin surface within a predetermined interval of the exposure of the skin surface to solar radiation.

None of the references relied on by the Examiner, whether considered individually or collectively, discloses or suggests the application of electromagnetic radiation within a predetermined period of exposure of a skin surface to solar radiation. Wulf and Changaris teach the use of artificially produced UV radiation to cause tanning of the skin in anticipation of eventual exposure of the skin to the sun. But neither of those references states or suggests that the exposure to the sun must come within a *predetermined period* of the UV treatment. It would be expected that the individual could go out in the sun generally *any time after* the tan has appeared. There would understandably be no requirement that the individual go out in the sun *within (in less than)* a set period of time of treatment.

**Claim 70** Applicant has amended independent claim 70 herein to provide a description of a particular embodiment of applicant's invention. Applicant maintains that claim 70 as amended distinguishes over the prior art relied on by the Examiner in rejecting the claims.

As set forth in claim 70, a skin treatment method comprises, without regard to visible skin conditions along a skin surface of an individual, applying electromagnetic radiation to the skin surface in a first treatment session to at least reduce damage to the skin caused by exposure of the individual to Xray or ultraviolet radiation, and subsequently, without regard to visible skin conditions along the skin surface, applying electromagnetic radiation to the skin surface in a second treatment session to at least partially prevent, reverse, or inhibit damage to the skin caused by exposure of the individual to Xray or ultraviolet radiation. The electromagnetic radiation applied to the skin surface during at least one of treatment sessions has an electromagnetic spectrum including only wavelengths greater than 400 nm.

Wulf and Changaris, the principal references relied on by the Examiner in rejecting the claims of the present application, both require the application of radiation with

wavelengths below 400 nm in their methods. Their methods pertaining to the tanning of the skin manifestly would not work if the applied electromagnetic radiation had an electromagnetic spectrum including only wavelengths greater than 400 nm.

**Claim 72** Applicant respectfully traverses the rejection of claim 72 and continues to assert that claim 72 distinguishes over the prior art. As set forth in claim 72, a skin treatment method comprises determining a degree of exposure of a skin surface to Xray or ultraviolet radiation, and subsequently applying an effective amount of electromagnetic radiation, in accordance with the determined degree of Xray or ultraviolet exposure, to a skin surface to at least reduce damage to the skin caused by exposure to the Xray or ultraviolet radiation, the applying of the electromagnetic radiation being effectuated in the absence of any visible Xray or ultraviolet radiation damage along the skin surface.

None of the references cited by the Examiner, whether considered alone or together with one or more other references, either discloses or suggests such a method wherein one determines a degree of exposure of a visibly undamaged skin surface to Xray or ultraviolet radiation and subsequently applies an effective amount of electromagnetic radiation to the skin surface, in accordance with the determined degree of Xray or ultraviolet exposure, to at least reduce damage to the skin caused by exposure to the Xray or ultraviolet radiation.

Wulf discloses a dosimeter and a method of using the dosimeter to measure an incident amount of UV radiation on a person's skin and to automatically generate an alarm warning the person against continued UV exposure as being potentially dangerous. (Paragraph bridging columns 17 and 18; column 19, lines 30-40.) Wulf says nothing about measuring the incident radiation and subsequently applying an effective amount of electromagnetic radiation to the skin, in accordance with the determined degree of ultraviolet exposure, to at least reduce damage to the skin caused by exposure to the ultraviolet radiation

**Claim 58** Applicant has amended claim 58 to distinguish the invention over the teachings of Talpalriu. As set forth in amended claim 58, a light treatment method comprises generating light of a selected spectral composition, directing the light towards a skin surface, and thereafter applying a marker film to the skin surface at locations where the light has been applied to the skin surface, the marker film being applied at each point of the skin surface to which the electromagnetic radiation has been applied.

Talpalriu teaches the application of a narrow strip or band of a marker to a skin surface. The marker manifestly does not cover the entire skin surface to which radiation has been applied. Instead, the marker is applied along only a narrow portion of the skin surface as a sign that radiation has been applied. Applicant's invention as set forth in amended claim 58 may perform the additional potential function of blocking the further application of radiation to the treated skin surface, for instance, where the marker film is opaque to the applied radiation. Talpalriu provides no suggestion of applying the marker film in the way recited by applicant in amended claim 58.

**Claim 78** Applicant traverses the rejection of claim 78 herein and contends that claim 78 distinguishes over the prior art. As set forth in claim 78, a skin treatment method comprising applying electromagnetic radiation to a skin surface of an individual to at least partially reduce damage to the skin caused by exposure of the individual to Xray or ultraviolet radiation, the applying of the electromagnetic radiation to the skin surface being effectuated prior to, during or after the exposure of the individual to Xray or ultraviolet radiation. The electromagnetic radiation is so defined by parameters including total energy, pulse number, pulse duration, and electromagnetic spectrum, that the electromagnetic radiation is absorbed by endogenous chromophores in the epidermis and by chromophores in

underlying tissues, to thereby stimulate a healing response and a release of tissue substances without permanently damaging the epidermis and the underlying tissues.

None of the references of record, whether considered singly or in combination, either discloses or suggests the method of claim 78 wherein electromagnetic radiation applied to a skin surface to at least reduce damage to the skin caused by exposure of the individual to Xray or ultraviolet radiation is so defined by parameters including total energy, pulse number, pulse duration, and electromagnetic spectrum, that the electromagnetic radiation is absorbed by endogenous chromophores in the epidermis and by chromophores in underlying tissues, to thereby stimulate a healing response and a release of tissue substances *without visibly damaging* the epidermis and the underlying tissues.

The methods of Wulf and Changaris inevitably damage the epidermis (where the melanocytes are located).

Applicant sets forth further patentable subject matter in at least some of the dependent claims. For instance, the application of an exogenous chromophore such as porphyrin to a skin surface prior to the treatment with radiation is contrary to the methods of Wulf and Changaris. Those prior art methods seek to tan the skin and the application of a chromophore which absorbs UV radiation is contrary to that desired end result. In addition, the application of a chromophore such as porphyrin to a skin surface prior to the treatment with radiation, per the method of Wulf, introduces another variable which could complicate and negate the controlled delivery of UV radiation.

The other two references cited by the Examiner and not relied on, namely Chubb et al. and Spivak, do not appear to be relevant. Chubb is directed to regulating the entire amount of UV radiation that impinges on a person throughout the year. The Chubb method

requires the use of UV lamps in the winter time and sunscreens in the summer months. This is quite different from applicant's method of applying electromagnetic radiation.

Spivak is directed to a method and apparatus for inducing tanning.

**Claim 91** According to new independent claim 91, a light treatment method comprises generating energy of a selected composition, directing the energy towards a skin surface, thereafter applying a marker film to the skin surface at locations where the energy has been applied to the skin surface, and operating a sensor to detect the marker film on the surface.

To the extent that the Examiner's rejection of dependent claim 81 applies to claim 91, applicant respectfully traverses the rejection of claim 81 and maintains that independent claim 91 and dependent claims 81-83 present subject matter that distinguishes over the prior art and particularly over the teachings of Talpalriu and Eckhardt.

In particular, applicant contends that one of ordinary skill in the art would not be motivated to use the sensors of Eckhardt in the method of Talpalriu. Talpalriu teaches the application of a narrow strip or band of a marker to a skin surface, along only a narrow portion of the skin surface as a sign that radiation has been applied. Eckhardt discloses the use of sensors in three applications. (1) To measure light applied in a sterilization or disinfection operation in order to enable termination of light application after a predetermined amount of light has been applied. (Col. 9, lines 20-29.) This use of a sensor measures light and would not incline one of ordinary skill in the art to use the sensor to detect a marker film on a skin surface. (2) An electrical impedance-measuring sensor may be used to detect bare skin as opposed to a bandage. (Col. 13, lines 57-67.) One of ordinary skill in the art would receive no impetus from Eckhardt here to use a sensor to detect a marker film applied to a skin surface. (3) A photosensor may be used to detect a barcode that appears on



a bandage for purposes of determining the transmissivity of the bandage. (Col. 14, lines 4-14.) Again, one of ordinary skill in the art would not find motivation here to use the photosensor to detect a marker film on a skin surface.

According, dependent claims 81-83 and independent claim 91 present addition subject matter that distinguishes over the prior art.

### *Conclusion*

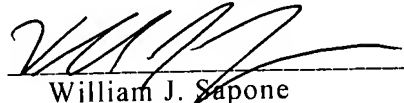
For the foregoing reasons, independent claims 1, 29, 58, 68, 70, 72, 73, 78, and 91, as well as the claims dependent therefrom, are deemed to be in condition for allowance. An early Notice to that effect is earnestly solicited.

The claim amendments, if any, made herein are made without prejudice to applicants' right to pursue additional subject matter in a separate continuation or divisional application.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,

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